

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ALAN OLSON**, on March 30, 2005 at 3:25 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Alan Olson, Chairman (R)
Rep. Dennis Himmelberger, Vice Chairman (R)
Rep. Robyn Driscoll (D)
Rep. George G. Groesbeck (D)
Rep. Robin Hamilton (D)
Rep. Hal Jacobson (D)
Rep. Harry Klock (R)
Rep. Mark E. Noennig (R)
Rep. Diane Rice (R)
Rep. Wayne Stahl (R)
Rep. Karl Waitschies (R)
Rep. Brady Wiseman (D)

Members Excused: Rep. Dave Gallik, Vice Chairman (D)
Rep. John Parker (D)

Members Absent: None.

Staff Present: Todd Everts, Legislative Branch
Cynthia Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 497, 3/21/2005; SB 365,
3/21/2005
Executive Action: SB 480; HB 787; SB 497; SB 365

EXECUTIVE ACTION ON SB 480

Motion: REP. KLOCK moved that SB 480 BE CONCURRED IN.

Discussion:

Todd Everts, Legislative Research Analyst, explained the bill was brought because Greg Petesch, Code Commissioner, issued a legal opinion that the coal severance tax incentive was unconstitutional.

Vote: Motion carried 12-2 by roll call vote with REP. OLSON and REP. WAITSCHIES voting no, and REP. HIMMELBERGER, REP. GALLIK, REP. GROESBECK, REP. RICE and REP. PARKER voting aye by proxy. REP. GALLIK will carry the bill on the floor of the House.

HEARING ON SB 497

Opening Statement by Sponsor:

SEN. JOSEPH (JOE) TROPILA (D), SD 13, opened the hearing on **SB 497**, a bill which would restrict liquor license locations if within five miles of city upon an annexation. **SEN. TROPILA** explained all cities in Montana have a quota for liquor licenses. There are 79 active licenses in Great Falls, which is 39 over the quota. **SEN. TROPILA** explained most of the cities in Montana are presently over quota. **SEN. TROPILA** described the five-mile donut surrounding the city and once the city annexes ground, the five-mile donut is moved outward, and county liquor licenses become city licenses. **SEN. TROPILA** spoke about the annexation of the Great Falls airport and how that pushed out the donut. **SEN. TROPILA** contended people are purchasing county liquor licenses in anticipation of an annexation and selling the licenses for a large profit. **SEN. TROPILA** believed SB 497 would help to alleviate that practice.

Proponents' Testimony:

Mark Staples, Montana Tavern Association, provided a background of the quota system and testified the quota system was not embraced by the licensed beverage associations. **Mr. Staples** stated the quota system is responsive to population increases, and that some annexations do not increase the population, but do bring in new licenses. **Mr. Staples** admitted there are some opportunistic entrepreneurs who will take advantage of annexations. **Mr. Staples** explained that the bill will ensure that just because a business is annexed, the annexation would not

mean it gets a quota license for transferring into the heart of the city, and the license cannot be transferred for five years.

Ms. Staples acknowledged the whole quota system should be addressed, but stated SB 497 is not the vehicle to address larger issues, and is meant to address one particular abuse of the quota system.

John Hayes, an insurance agent in Great Falls who works with the Cascade County Tavern Association, testified that people in Great Falls are very concerned about new licenses being annexed into the City. **Mr. Hayes** explained how the airport annexation brought in five new licenses from the county. **Mr. Hayes** believed the City Commissioners and County Commissioners are excited about seeing this problem addressed.

Opponents' Testimony: None.

Informational Testimony:

Neil Peterson, Department of Revenue, submitted a printout of liquor licenses held in Montana, and a chart depicting the City Quota area and the five-mile donut area. **Mr. Peterson** explained the primary reasons a city goes over quota are because (1) existing licenses remained valid when the quota system was enacted; and (2) there is an ability to float licenses from one quota area to another; and (3) annexation brings in additional licenses from the county to the city.

EXHIBIT (feh67a01)

EXHIBIT (feh67a02)

{Tape: 1; Side: A; Approx. Time Counter: 9.3 - 22.9; Comments: Testimony on SB 497.}

REP. KARL WAITSCHIES, HD 36, PEERLESS, indicated that a new county all-beverage license would cost \$400, plus a processing fee of \$250. **Mr. Staples** then explained a city license in Kalispell could sell for \$300,000 to \$400,000. **SEN. WAITCHIES** pointed out that it would be worth the five-year wait if a person could purchase a county license and then sell it as a city license. **SEN. WAITCHIES** did not see where SB 497 would solve the problem. **Mr. Staples** did not believe people buying licenses and waiting for annexation before selling was occurring regularly, but admitted it is a concern.

REP. DENNIS HIMMELBERGER, HD 47, BILLINGS, wanted to know how many all-beverage licenses an individual could hold. **Mr. Peterson** reported a person could hold only one all-beverage license, and there was no limit to how many beer and wine

licenses a person could hold. **REP. HIMMELBERGER** asked if there was a difference in value between a beer and wine license versus an all-beverage license. **Mr. Peterson** explained a beer license would be \$200, and the all-beverage license would be \$400. **REP. HIMMELBERGER** was more interested in the value and asked if a beer and wine license on the open market would be worth the same price as an all-beverage license. **Mr. Peterson** replied it would depend on whether the beer license has gaming associated with it. A license without gaming is worth substantially less than the all beverage or beer license with gaming.

{Tape: 1; Side: B}

Closing by Sponsor:

SEN. TROPILA closed the hearing by clarifying the original bill said if property was annexed within the five-mile donut, the license could not be moved into the city, but could be moved within five miles of the city. However, the Department of Revenue added the five-year time limit and allowed the license to then be moved into the city after five years. **SEN. TROPILA** stated he is trying to eliminate a proliferation of casinos.

HEARING ON SB 365

Opening Statement by Sponsor:

SEN. JON ELLINGSON (D), SD 49, opened the hearing on **SB 365**, which would revise the laws related to the universal system benefit (USB) charge and would extend the charge through December 31, 2009. **SEN. ELLINGSON** explained that the USB program is funded by 2.4 percent of each utility's annual retail sales revenue. **SEN. ELLINGSON** believed the program should be continued, and did not believe there would be any opposition.

Proponents' Testimony:

John Fitzpatrick, Northwestern Energy (NWE), testified that NWE has been a long-time supporter of the USB program and supports SB 365.

Doug Hardy, General Manager of Park Electric in Livingston, submitted written testimony as a proponent of SB 365.

EXHIBIT (feh67a03)

Don Quander, Counsel for the Montana Large Customer Group, has supported the USB program since its inception in 1997.

Jim Morton, District XI Human Resource Development Council (HRDC), stated SB 365 would continue to assist many low-income households in Montana.

Greg Jergeson, Chairman of the Montana Public Service Commission (PSC), testified that the PSC voted 3-2 to support the continuation of the USB program believing that the program serves a vital public purpose. **Commissioner Jergeson** commended SEN. ELLINGSON for having backup legislation regarding the USB program.

Rachel Haberman, Energy Share of Montana, supported SB 365 because of the high need in Montana for low-income energy assistance. **Ms. Haberman** testified there are over 90,000 Montana families who are more than 150 percent below the poverty level. **Ms. Haberman** depicted the USB program as critical.

Curt Chisholm, Rocky Mountain Development Council, believed reauthorization of USB funding was critical to the ability of HRDC's in Montana to continue to operate weatherization and Low-Income Energy Assistance Programs (LIEAP) for Montana's low-income families.

Pat Callbeck Harper, AARP Montana, recalled that fixing energy rates was the number two priority of AARP Montana's members.

Chuck McGraw, Renewable Northwest Project and Natural Resources Defense Council, supported SB 365.

Patrick Judge, Montana Environmental Information Center (MEIC) and Montana Renewable Energy Association, stated both organizations stand in strong support of SB 365.

Opponents' Testimony: None.

Informational Testimony:

Jim Nolan, Department of Public Health and Human Services (DPHHS), has operated the weatherization and LIEAP program for a number of years and offered to provide the Committee with any additional information it may need regarding the programs.

Questions from Committee Members and Responses:

REP. WAITCHIES asked for the percentages spent on each amount referenced on Page 1, Line 13. **Mr. Nolan** provided figures from the 2004 report. Montana Dakota Utilities spent \$784,862 total

on USB, with \$371,958 going to low-income programs; NWE spent \$8,886,755, with \$2,247,698 going to low-income programs; and the co-ops spent \$3,804,438 on USB, with \$1,082,193 going to low-income assistance.

REP. WISEMAN was curious what would happen if SB 365 did not pass, and **SEN. ELLINGSON** explained the programs would cease to exist.

Closing by Sponsor:

SEN. ELLINGSON closed the hearing by reiterating the importance of passing USB legislation.

{Tape: 1; Side: B; Approx. Time Counter: 3.5 - 15.4; Comments: Hearing on SB 365.}

EXECUTIVE ACTION ON HB 787

Motion: **REP. HIMMELBERGER** moved that HB 787 DO PASS.

Motion: **REP. WAITSCHIES** moved that HB078701.ate BE ADOPTED.
EXHIBIT(feh67a04)

Discussion:

Mr. Everts reviewed HB078701.ate with the Committee. **REP. WAITCHIES** advised the Taxation Committee receives a dozen requests a year to place check-off boxes on tax returns. **REP. WAITCHIES** was cautious about allowing too many check-off boxes.

Vote: Motion carried unanimously by voice vote, with **REP. GALLIK**, **REP. GROESBECK**, **REP. PARKER** and **REP. JACOBSON** voting aye by proxy.

Motion: **REP. HIMMELBERGER** moved that HB 787 DO PASS AS AMENDED.

Motion: **REP. KLOCK** moved that HB078702.ate BE ADOPTED.
EXHIBIT(feh67a05)

Mr. Everts reviewed the amendment with the Committee and explained with the passage of HB078701.ate, the contingent termination date is no longer needed, so those particular sections of HB078702.ate should be disregarded.

REP. NOENNIG asked about No. 10, and **Mr. Everts** explained that amendment clarifies another use of these funds can be that the Department of Transportation can use the money flowing into the

account to match federal funds. **REP. NOENNIG** pointed out the language does not refer to money in the special account, but just refers to State money. **Mr. Everts** clarified it is part of the Special Revenue Account.

Substitute Motion: **REP. NOENNIG** moved HB078702.ATE, WITHOUT NOS. 2 AND 12, AND CHANGING NO. 10 TO REFLECT USE "MONEY IN THE ACCOUNTS" INSTEAD OF "STATE MONEY," BE ADOPTED.

Discussion:

CHAIRMAN OLSON expressed concern with No. 8 and the affect it would have where private property is being crossed. **REP. NOENNIG** pointed out if you have the right-of-way, whether the road is used or not, you have the right to use the road. **REP. NOENNIG** suggested it would be in the spirit of the bill to say whether you own the fee or the right-of-way, you can use the road whether it is open or not.

{Tape: 2; Side: A}

Discussion:

REP. STAHL inquired about prescriptive easements and asked if those would be decided by a court and would set limits on rights-of way. **Mr. Everts** agreed, and **REP. NOENNIG** added the courts are not clear on the nature of prescriptive uses.

REP. WAITCHIES wanted to know what the point was to making the commission larger. **REP. STAHL** suggested they wanted to include representatives from all the groups who use the trails.

Vote: Motion failed 7-7 by roll call vote with **REP. GALLIK**, **REP. KLOCK**, **REP. NOENNIG**, **REP. OLSON**, **REP. RICE**, and **REP. STAHL** voting aye, and **REP. GROESBECK** voting aye by proxy, and **REP. PARKER** and **REP. JACOBSON** voting no by proxy.

Motion/Vote: **REP. HIMMELBERGER** moved that HB 787 DO PASS AS AMENDED. Motion carried 8-6 by roll call vote with **REP. GALLIK**, **REP. HAMILTON**, and **REP. WISEMAN** voting no, and **REP. GROESBECK**, **REP. PARKER**, and **REP. JACOBSON** voting no by proxy.

EXECUTIVE ACTION ON SB 497

REP. WAITCHIES commented he did care for the five-year provision in SB 497 and asked whether that provision could be extended with an amendment to ten or twelve years.

Motion: REP. WAITSCHIES moved that SB 497 BE CONCURRED IN.

Motion: REP. WAITSCHIES moved that a CONCEPTUAL AMENDMENT BE ADOPTED, CHANGING THE FIVE-YEAR PROVISION TO TWELVE YEARS.

Discussion:

REP. DIANE RICE, HD 71, HARRISON, wondered what would happen if someone buys a license and has to sell the license for a legitimate reason such as illness. CHAIRMAN OLSON believed the 12 years would run from the date of annexation.

REP. NOENNIG agreed the 12 years would run from the date of annexation and the license could not be transferred to another location with the city quota area, but asked if the license could be transferred to someone in the county quota area. Mr. Everts agreed it could. REP. NOENNIG then referred to the scenario proposed by REP. RICE, and suggested in the case of an illness, the license could be sold to someone within the county quota area.

REP. HARRY KLOCK, HD 83, HARLOWTON, explained that if the city limits were moved outward, the license could not be transferred into the city.

REP. NOENNIG wondered why there was a time limit at all. REP. HAMILTON thought a time limit was a good idea because a "mom and pop" business out of town may legitimately want to move into town. REP. NOENNIG suggested those businesses would still be subject to the quota system, and the quota system is not working well because of all of the exceptions.

REP. WISEMAN explained how quotas are expanded based on the census and the opportunistic situation created where a business just outside the five-mile donut and paying a minimal amount for their license, could then be annexed into the donut and be allowed to move anywhere within the city licensing area. REP. WISEMAN was discouraged with the current quota system and commented the Tavern Association is famous for coming before the Legislature and demanding anti-competitive legislation. REP. WISEMAN depicted the whole licensing system as anti-competitive. REP. WISEMAN explained how Bozeman has a million extra people every summer that are not counted in the census, and Bozeman does not have enough licenses to serve the people. REP. WISEMAN would like to see the licenses become non-transferrable and disallowed for use as assets for loans.

REP. NOENNIG clarified it does not matter whether a business is annexed into the city limits; rather, whether a business is annexed to within five-miles of the city limits. The amendment would require that any business within the five-mile limit would not be transferrable for 12 years.

REP. GALLIK struggled with the issue and wondered why anyone would care whether the license was transferred. **REP. HIMMELBERGER** explained how people were buying county licenses at a cheaper price and then, when the business is annexed in, are selling the license for a substantial profit when the license is transferred into the city. **REP. HIMMELBERGER** believed the bill is an attempt to eliminate "casino rows."

REP. NOENNIG added that people do not like unregulated competition when they start out in a regulated market place. **REP. NOENNIG** reminded the Committee that people are paying \$400,000 for a \$400 license.

REP. WAITCHIES believed the whole point of the bill is to prevent underhanded dealings and the ability to move licenses into the city and circumvent the quota system.

REP. STAHL surmised that the bill was a good compromise with the amendment.

REP. WISEMAN responded to **REP. WAITCHIES'** concerns and stated the license is attached to a particular location, and that license could still be sold at that location once there is an annexation. **REP. WISEMAN** did not feel the bill would stop the problem.

REP. KLOCK knew of instances in Billings and Great Falls where annexation has created an opportunity for a business to take its license into the city. **REP. KLOCK** pointed out there are no gaming machines attached to the new Beer & Wine licenses.

REP. WAITCHIES wondered what conditions have to be met to obtain a license. **REP. KLOCK** responded the location must be up to Code and the location must be decided before application is made. The application also requires public notice and an opportunity for objections to be heard. **REP. KLOCK** recited other location restrictions that would apply.

{Tape: 2; Side: A; Approx. Time Counter: 8.7 - 30.4; Comments: Executive action SB 497.}

{Tape: 2; Side: B}

REP. HIMMELBERGER pointed out that an applicant cannot apply for multiple licenses and submit only one address.

Vote: **REP. STAHL's** motion TO ADOPT a CONCEPTUAL AMENDMENT changing the five-year time period to twelve years failed 5-9 by roll call vote, with **REP. KLOCK**, **REP. WAITCHIES**, **REP. HAMILTON**, **REP. STAHL**, and **REP. OLSON** voting aye, and **REP. GROESBECK** and **REP. PARKER** voting no by proxy.

Discussion:

REP. KLOCK stated SB 497 is not a Tavern Association bill and is brought by people in Great Falls. In addition, the original bill did not contain the five-year limitation.

REP. WISEMAN commented that tavern owners, in general, do not want competition, and they use the system to prevent competition. **REP. WISEMAN** believed the licensing situation is ineffective and casinos are not regulated the way they should.

Vote: Motion carried 10-4 by roll call vote with **REP. GALLIK**, **REP. HIMMELBERGER**, and **REP. WISEMAN** voting no, and **REP. GROESBECK** voting no by proxy, and **REP. PARKER** voting aye by proxy. **REP. STAHL** will carry the bill on the floor of the House.

EXECUTIVE ACTION ON SB 365

Motion/Vote: **REP. WISEMAN** moved that HB 365 BE CONCURRED IN. Motion carried unanimously by voice vote, with **REP. GROESBECK** and **REP. PARKER** voting aye by proxy. **REP. WISEMAN** will carry the bill on the floor of the House.

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
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ADJOURNMENT

Adjournment: 5:00 P.M.

REP. ALAN OLSON, Chairman

CYNTHIA PETERSON, Secretary

AO/cp

Additional Exhibits:

EXHIBIT ([feh67aad0.TIF](#))